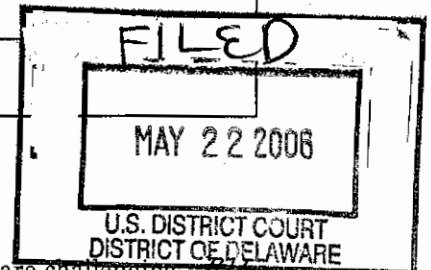


**ORIGINAL**

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>DELAWARE</u>
Name (under which you were convicted): <u>MARK A. SPRUANCE</u>		Docket or Case No.: <u>00170011</u>
Place of Confinement: <u>Delaware Correctional Center</u>		Prisoner No.: <u>00170011</u>
Petitioner (include the name under which you were convicted)      Respondent (authorized person having custody of petitioner) <u>MARK A. SPRUANCE</u> v. <u>THOMAS CARROLL</u>		
The Attorney General of the State of <u>CARL DANBERG</u>		

PETITION



1. (a) Name and location of court that entered the judgment of conviction you are challenging. SUPERIOR COURT OF SUSSEX COUNTY BD Scanned  
IFF
- (b) Criminal docket or case number (if you know): 92-01-0382 - 0383 (R3)
2. (a) Date of the judgment of conviction (if you know): 12-17-1992
- (b) Date of sentencing: same
3. Length of sentence: 28 years level-5 followed by probation
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: Attempted Robbery and Unlawful sexual intercourse
6. (a) What was your plea? (Check one)
 

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Delaware supreme court

(b) Docket or case number (if you know): 640 A. 2d 655 (1994) WL 144590

(c) Result: conviction affirmed

(d) Date of result (if you know): 3/25/1994

(e) Citation to the case (if you know): 640 A. 2d 655 1994 WL 144590

(f) Grounds raised: Don't remember exactly

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: Superior Court of Sussex County

(2) Docket or case number (if you know): 92-01-0382-0383

(3) Result: denied

(4) Date of result (if you know): 10/28/1996

(5) Citation to the case (if you know): N/A

(6) Grounds raised: Don't remember exactly

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Superior Court of Sussex County  
 (2) Docket or case number (if you know): CR. A. NO. 92-01-0382-0383  
 (3) Date of filing (if you know): 8/11/1997  
 (4) Nature of the proceeding: Motion for postconviction relief  
 (5) Grounds raised: violation of constitutional rights that pertain to 5<sup>th</sup> and 6<sup>th</sup> amendment rights and superior court criminal rules 7(a) and 7(b)

- (6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: motion denied

(8) Date of result (if you know): 1/23/1998

- (b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: Delaware Supreme Court  
 (2) Docket or case number (if you know): 218 A.2d 529 1998 WL 666214  
 (3) Date of filing (if you know): don't know  
 (4) Nature of the proceeding: Appealed to the supreme court  
 (5) Grounds raised: same as above

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Supreme court affirmed

(8) Date of result (if you know): 7/15/1998

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: superior court of Sussex County

(2) Docket or case number (if you know): 92-01-0382-0383

(3) Date of filing (if you know): don't remember

(4) Nature of the proceeding: Motion for Postconviction Relief

(5) Grounds raised: violation of fifth amendment rights and sixth amendment rights - illegal arrest - insufficient evidence - illegal conviction

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Motion denied

(8) Date of result (if you know): March-11-05

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☒ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: VIOLATION OF THE SIXTH AMENDMENT CONFRONTATION CLAUSE

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The (witness-victim) gave testimonial communication to the court as a witness for the prosecution in a language unknown to the defense. That language was interpreted by a translator provided for the prosecution. The defendant and his counsel was denied a interpreter for the defense even after conflicts were found with the victims testimony, and the interpretation.

- (b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Postconviction Relief

Name and location of the court where the motion or petition was filed: Sussex County Superior Court



Docket or case number (if you know): CR. A. NO. 92-01-0382-0383 (R3)Date of the court's decision: 10-25-2005Result (attach a copy of the court's opinion or order, if available): EXHIBIT (1)

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPREME COURT OF DELAWARE - DOVER DELDocket or case number (if you know): NO. 564, 2005Date of the court's decision: 4-24-2006Result (attach a copy of the court's opinion or order, if available): EXHIBIT (2)(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/APresent petitionGROUND TWO: VIOLATION OF THE SIXTH AMENDMENT AND FIFTH AMENDMENT GOVERNING GRAND JURY INDICTMENTS.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

After the defense Counsel proved that the states evidence would not render A conviction, The prosecution changed the indicted charged of unlawful sexual intercourse to the charge of attempted without returning to the Grand jury,

for the Grand jury to review and make a determination,  
to prevent the Government's intrusion's.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: counsel elected  
to raise other grounds against my wishes

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Post-conviction

Name and location of the court where the motion or petition was filed: SUSSEX COUNTY  
SUPERIOR COURT, 1 the circle suite 2 - Georgetown Del 19947

Docket or case number (if you know): No. 93-01-0382-0383

Date of the court's decision: October 25, 2005

Result (attach a copy of the court's opinion or order, if available): see EXHIBIT (1)

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: THE DELAWARE SUPREME  
COURT DOVER, Del,

Docket or case number (if you know): NO. 564, 2005  
 Date of the court's decision: April 24 / 2006  
 Result (attach a copy of the court's opinion or order, if available): see EXHIBIT (2)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/A  
Present Petition

GROUND THREE: VIOLATION OF THE FIFTH AMENDMENT Rule  
ESTABLISHED IN THE SUPERIOR COURT RULES 7(a) and 7(b).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The administration of the law was unreasonable and placed  
the defendant twice in jeopardy, and creating harmful  
errors and a form of prejudice because the rules require  
that the indictment be plain-concise, and definite written of facts  
constituting the offense or offenses charged and, not changed or  
altered without returning to the grand jury for A new indictment.

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Counsel elected  
to raise different grounds against my wishes.



## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Post-conviction Relief

Name and location of the court where the motion or petition was filed: SUSSEX COUNTY SUPERIOR COURT 1 The Circle Suite 2 Georgetown Del 19947

Docket or case number (if you know): C.R.A. NO. 92-01-0383-0382

Date of the court's decision: 1-23-1998

Result (attach a copy of the court's opinion or order, if available): N/A

lost over the years

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: THE SUPREME COURT OF DELAWARE

Docket or case number (if you know): 718 A.2d 529 1998 WL 666714

Date of the court's decision: 7-15-1998

Result (attach a copy of the court's opinion or order, if available): N/A

lost over the years

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: I have re-raised this issue of Constitutional violation in the superior Court and Supreme Court.

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Dont remember

(b) At arraignment and plea: KARL HALLER

(c) At trial: KARL HALLER

(d) At sentencing: KARL HALLER

(e) On appeal: DIRECT APPEAL - KARL HALLER AND JOHN R. HINER JR.

(f) In any post-conviction proceeding: PRO-SE

(g) On appeal from any ruling against you in a post-conviction proceeding: PRO-SE

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\* The petitioner states that he has filed all his motions and appeals in accordance with the superior court and Supreme Court Rules as required. He states that pursuant to Superior Court Rule 61(i)(5) he presented evidence and facts supporting a colorable claim that there was a miscarriage of justice. He also presented factual constitutional violations that undermined the fundamental legality, reliability, integrity and fairness of the proceedings that led to his conviction. He states that the lower courts consistently ignore relevant issues of constitutional violations that call for new trials or dismissal of charges. The Petitioner is seeking this Court's permission to allow him to bring his case to the District Court for full review, and that the trial court be subjected to procedures as the criminal rules require regardless of how many years has past. It has become common practice for Sussex County Superior Court to ignore the Grand jury procedures required in indictments. Please review Exhibit (1) and Exhibit (B) The trial court has never examined the factual violation but rather ignored them by barring them without consideration.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —



Therefore, petitioner asks that the Court grant the following relief: THAT HIS CASE  
BE REMANDED BACK TO THE TRIAL COURT FOR A NEW TRIAL

or any other relief to which petitioner may be entitled.

PRO-SE

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

MAY 15 - 2006 (month, date, year).

Executed (signed) on 15 (date).

Michael Jernance

Signature of Petitioner

\*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN FORMA PAUPERIS DECLARATION

District Court

[Insert appropriate court]

\* \* \* \* \*

VM Mr. Mark K. Spence

SBI# 170011 UNIT 11

DELAWARE CORRECTIONAL CENTER

118 ADDOCK ROAD

SMYRNA, DELAWARE 19977

2006

SW.S.D

M

WILMINGTON, DE 19850

N



Office Clerk, United States District

Court 844 N. King Street,

Lockbox 18

Wilmington, Delaware

19801-3570

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DELAWARE 19947  
TELEPHONE (302) 856-5257

October 25, 2005

EXHIBIT (1)

N440 - State Mail  
Mark A. Spruace  
SBI No. 00170011  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**RE: Criminal Action No. 92-01-0382, 0383  
Defendant ID No. 92S00269DI  
Motion for Postconviction Relief (R4)**

Dear Mr. Spruance:

Your 4<sup>th</sup> Motion for Postconviction Relief raising allegations of violations of your Fifth Amendment and Sixth Amendment rights is denied for the same reasons set forth in my letter to you of March 11, 2005 (copy enclosed) when your 3<sup>rd</sup> Motion was denied. These allegations are procedurally barred and should be dismissed.

Defendant's Motion for Postconviction Relief is denied.

**IT IS SO ORDERED.**

Yours very truly,

  
T. Henley Graves

THG:baj  
Enclosure  
cc: Prothonotary  
Department of Justice

EX (1)

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK A. SPRUANCE,

Defendant Below-  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-  
Appellee.

§

§ No. 564, 2005

§

§

§ Court Below—Superior Court

§ of the State of Delaware

§ in and for Sussex County

§ Cr. ID No. 92S00269DI

§

§

§

Submitted: February 24, 2006

Decided: April 24, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**ORDER**

This 24<sup>th</sup> day of April 2006, upon consideration of the briefs of the parties and the record below, it appears to the Court that the judgment of the Superior Court should be affirmed on the basis of and for the reasons set forth in its decisions dated March 11, 2005 and October 25, 2005. We find no error or abuse of discretion on the part of the Superior Court in any respect.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

Ex(2)

A handwritten signature in black ink, appearing to be 'T. L. ...', written over a horizontal line.

Justice



EXHIBITS (15)

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DELAWARE 19947  
TELEPHONE (302) 856-5257

March 11, 2005

N440  
Mark A. Spruance  
SBI No. 00170011  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**RE: Criminal Action Nos. 92-01-0382, 0383(R3)**  
**Defendant ID No. 92S00269DI - Motion for Postconviction Relief**

Dear Mr. Spruance:

Your Motion for Postconviction Relief has been reviewed by the Court and it is denied.

In the present Motion, you allege that you were illegally arrested, that the jury convicted you of attempted robbery in the 1<sup>st</sup> degree without considering whether or not your actions were intentional, and that there was insufficient evidence as to the rape charge.

On December 17, 1992, you were convicted of attempted robbery and unlawful sexual intercourse in the 1<sup>st</sup> degree. You received a sentence of 28 years at supervision Level 5, followed by probation. The Delaware Supreme Court affirmed your conviction on March 25, 1994. *Spruance v. State*, 640 A.2d 655 (Table), 1994 WL 144590 (Del. Supr.) (Order).

On October 28, 1996, you filed Motion for Postconviction Relief which was denied. The Supreme Court affirmed this Court's ruling on March 20, 1997. *Spruance v. State*, 692 A.2d 415 (Table), 1997 WL 139811 (Del. Supr.) (ORDER). Then on August 11, 1997, you filed your second Motion for Postconviction Relief which was denied on January 23, 1998. That decision was appealed and the Supreme Court affirmed same on July 15, 1998. *Spruance v. State*, 718 A.2d 529 (Table), 1998 WL 666714 (Del. Supr.) (ORDER).

Mark Spruance  
Page 2  
March 11, 2005


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Your present application is procedurally barred under Rule 61(i)(1) as it is filed more than three years from the date your conviction was final. The Supreme Court affirmed your conviction on direct appeal on March 25, 1994, and the mandate returning the case to this Court is dated April 14, 1994. It has been almost 11 years since your conviction was affirmed and therefore the present action is procedurally barred.

It is also barred because this is your third Motion for Postconviction Relief. It is barred as being a repetitive Motion under Rule 61(i)(2). There is nothing in your application which requires that the Court revisit your case because of any claims that the Court lacked jurisdiction or that there was a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to your conviction. Rule 61(i)(5). Your complaint that the jury did not find that you intentionally attempted to commit robbery in the 1<sup>st</sup> degree is erroneous in that the instructions to the jury clearly advised them that they had to find your conduct was intentional.

The Defendant's Motion for Postconviction Relief, being procedurally barred, is dismissed.

Yours very truly,

  
T. Henley Graves

THG:baj  
cc: Prothonotary  
Department of Justice